



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Application of DEPOSIT GUARANTEE
FUND OF UKRAINE Pursuant to 28 U.S.C.
§ 1782, For an Order to Obtain Discovery in
Aid of a Foreign Proceeding.

Case No. 22-MC-00293

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

Whereas on October 10, 2022, the Deposit Guarantee Fund of Ukraine (“Applicant”), as the appointed liquidator of the Public Joint-Stock Company Fidobank (“Fidobank”) filed an application for an order pursuant to 28 U.S.C. § 1782 to issue a subpoena *duces tecum* to the Bank of New York Mellon (“BNYM”) (Dkts. 1-2); and

Whereas on October 31, 2022, the matter was referred to me as a non-dispositive motion (Dkt. 8); and

Whereas the Court has considered the accompanying memorandum of law, Declarations of Viktor Novikov and James Nealon, and supporting documents (see Dkts. 5-7); and

Whereas the Court finds that (1) the entity from whom discovery is sought, BNYM, is headquartered in this District, in New York City, New York; (2) the discovery is for use in a foreign proceeding before a foreign tribunal, *DGF v. Oleksandr Adarich and Others*, Case No. 46-21053/19, pending in Ukraine; and (3) the application for discovery is made by an interested person, i.e. the Deposit Guarantee Fund of Ukraine, see *Federal Republic of Nigeria v. VR Advisory Services, Ltd.*, 27 F.4th 136, 148 (2d Cir. 2022) (identifying threshold requirements for issuance of § 1782 subpoena); and

Whereas the Court further finds that the balance of the factors set forth in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-65, 124 S.Ct. 2466, 2483

(2004) weigh in favor of permitting the discovery requested pursuant to 28 U.S.C. § 1782;

It is hereby ORDERED that:

1. The ex parte application for discovery from Respondent BNYM pursuant to 28 U.S.C. § 1782 is granted;

2. The Applicant is authorized to take discovery relating to the issues identified in its application from Respondent BNYM in accordance with the Federal Rules of Civil Procedure and the Rules of this Court, including by serving on Respondent BNYM a subpoena *duces tecum* for a deposition and the production of documents listed in the form of the subpoena attached as Exhibit 2 to Applicant's Motion (Dkt. 2);

3. BNYM is hereby directed to comply with the subpoena in accordance with the Federal Rules of Civil Procedure and the Rules of this Court;

4. James Edward Nealon of Withers Bergman, LLP is hereby appointed to issue, sign, and serve the subpoena upon BNYM; and

5. This Court shall retain such jurisdiction as is necessary to effectuate the terms of such subpoena.

SO ORDERED:



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: November 1, 2022
New York, New York